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 7 SafeDesk Solutions, Inc. and Phil Autrey

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 DATA CAPITAL CORPORATION, a
 12 California Corporation,

13 Plaintiff,

14 v.

15 SAFEDESK SOLUTIONS, INC., an Oregon
 Corporation; PHIL AUTREY, an individual;
 16 DOES 1 through 25, inclusive,

17 Defendants.

Case No. C 08-00678 JW (HRL)

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' MOTION TO: (1) TO
 DISMISS THE COMPLAINT, OR, IN THE
 ALTERNATIVE, FOR A MORE
 DEFINITE STATEMENT; AND (2) TO
 STRIKE PORTIONS OF THE
 COMPLAINT**

18 The Court considered the motion of defendants SafeDesk Solutions, Inc. and Phil Autrey
 19 (collectively "defendants") to Dismiss the Complaint For Failure To State A Claim Upon Which
 20 Relief Can Be Granted; Or, In The Alternative, For A More Definite Statement, And To Strike A
 21 Portion Of The Complaint, pursuant to Rules 8(a), 12(b)(1), 12(b)(6), 12(e) and 12(f) of the
 22 Federal Rules of Civil Procedure, the opposition, arguments of counsel, and such other matters
 23 that it deemed appropriate.

24 Good cause appearing therefore, it is hereby ORDERED that:

25 Defendants Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be
 26 Granted is GRANTED, without leave to amend. The Complaint is dismissed with prejudice.

27 The Court concludes that plaintiff's allegations do not give rise to an actual or present
 28 controversy and, accordingly, the Court finds that it "lacks jurisdiction over the subject matter,"

1 pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. *See City of Erie v. Pap's A.M.*,
2 529 U.S. 277, 287, (2000).

3 Even if the Court had jurisdiction over this matter, the Court finds that, pursuant to Rule
4 8(a)(2) of the Federal Rules of Civil Procedure, the Complaint does not provide fair notice of
5 defendants' *actual* misconduct that supports any of the claims in this litigation. *Conley v. Gibson*,
6 355 U.S. 41, 47 (1957).

7 Finally, the Complaint is bereft of the necessary factual allegations to support its claims for
8 declaratory relief, breach of contract and the implied covenant of good faith and fair dealing,
9 breach of fiduciary duty, interference with prospective business relationships, and injunctive relief,
10 in violation of Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Smilecare Dental Grp. v.*
11 *Delta Dental Plan of Ca.*, 88 F.3d 780, 783 (9th Cir. 1996).

12 **IT IS SO ORDERED.**

13 DATED: _____

17 THE HONORABLE JAMES WARE
18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Ferry Building, Suite 200, San Francisco, California 94111-4213.

On February 4, 2008, I served true copies of the following document(s) described as

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO: (1) TO DISMISS THE COMPLAINT, OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT; AND (2) TO STRIKE PORTIONS OF THE COMPLAINT

on the interested parties in this action as follows:

Julian Pollok
Law Offices of Julian A. Pollok,
A Professional Corporation
1000 Wilshire Boulevard, Suite 620
Los Angeles, California 90017-2463
Telephone: (213) 688-7795
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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Coblenz, Patch, Duffy & Bass LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 4, 2008, at San Francisco, California.

Debra L. Singleton